PART IV

Section I-B

CENTRAL ACTS AND ORDINANCES

LAW AND PARLIAMENTARY AFFAIRS SECRETARIA'

NOTIFICATION

No. LAW 45 LCA 73, Bangalore, dated the 31st October 1973.

The Governor of Mysore is pleased to order that The Employees' Provident Funds and Family Pension Fund (Amendment) Act, 1973 (40 of 1973) which has been published in the Gazette of India, Extraordinary Part II, Section 1, dated 7th September 1973 be republished in the Mysore Gazette for general information.

H. SUBBA RAO,
Under Secretary to Government,
Department of Law and Parliamentary Affairs.

Assented to on 6--9-73. Act No. 40 of 1973.

THE EMPLOYEES' PROVIDENT FNUDS AND FAMILY PENSION FUND AMENDMENT ACT,

An

ACT

further to amend the Employees' Provident Funds and Family Pension Fund Act, 1952 and to incorporate an explanatory provision connected therewith in section 405 of the Indian Penal Code.

Be it enacted by Parliament in the Twenty-fourth Year of the Republic of India as follows :—

1. Short title and commencement :—(1) This Act may be called the Employees' Provident Funds and Family Pension Fund (Amendment) Act, 1973.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Amendment of section 8:—In section 8 of the Employees' Provident Funds and Family Pension Fund Act, 1952 (19 of 1952), (hereinafter referred to as the principal Act) for the words " be recovered by the appropriate Government ", the words " be recovered by the Central Provident Fund Commissioner or such other officer as may be authorised by him, by notification in the Official Gazette, in this behalf ", shall be substituted.

3. Amendment of section 11 :—Section 11 of the principal Act shall be re-numbered as sub-section (1) thereof and—

(a) in sub-section (1) as so re-renumbered, for the words and figures " section 230 of the Indian Companies Act, 1913 ", (7 of 1913), the words and figures " section 530 of the Companies Act, 1956 " (1 of 1956) shall be substituted ;

(b) after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely :—

" (2) Without prejudice to the provisions of sub-section (1), if any amount is due from an employer in respect of the employee's contribution (deducted from the wages of the employee) for a period of more than six months, the amount so due shall be deemed to be the first charge on the assets of the establishment, and shall,

notwithstanding anything contained in any other law for the time being in force, be paid in priority to all other debts."

4. Amendment of section 14.—In section 14 of the principal Act,—

(a) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) An employer who contravenes, or makes default in complying with, the provisions of section 6 or clause (a) of sub-section (3) of section 17 in so far as it relates to the payment of inspection charges, or paragraph 38 of the Scheme in so far as it relates to the payment of administrative charges, shall be punishable with imprisonment for a term which may extend to six months, but—

(a) which shall not be less than three months in case of default in payment of the employees' contribution which has been deducted by the employer from the employees' wages;

(b) which shall not be less than one month, in any other case;

and shall also be liable to fine which may extend to two thousand rupees:

Provided that the court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term or of fine only in lieu of imprisonment.";

(b) in sub-section (2), for the words "The Scheme", the words "Subject to the provisions of this Act, the Scheme" shall be substituted;

(c) sub-section (3) shall be omitted.

5. Insertion of new sections 14AA, 14AB and 14AC.- After section 14A of the principal Act, the following sections shall be inserted, namely :—

Enhanced punishment in certain cases after previous conviction.—" 14AA. Whoever, having been convicted by a court of an offence punishable under this Act, the Scheme or the Family Pension Scheme, commits the same offence shall be subject for every such subsequent offence to imprisonment for a term which may extend to one year but which shall not be less than three months and shall also be liable to fine which may extend to four thousand rupees.

Certain offences to be cognizable.—14AB. Notwithstanding anything contained in the Code of Criminal Procedure 1898 (5 of 1898) an offence relating to default in payment of contribution by the employer punishable under this Act shall be cognizable.

Cognizance and trial of offences :—14AC. (1) No court shall take cognizance of any offence punishable under this Act, the Scheme or the Family Pension Scheme except on a report in writing of the facts constituting such offence made with the previous sanction of the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf, by an Inspector appointed under section 13.

(2) No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act or the Scheme or the Family Pension Scheme. "

6. Amendment of section 14B :—In section 14B of the principal Act,—

(a) after the words " contribution to the Fund ", the words " or the Family Pension Fund " shall be inserted ;

(b) for the words "the appropriate Government", the words "the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf" shall be substituted;

(c) the words "twenty-five per cent of" shall be omitted;

(d) the following proviso shall be inserted at the end, namely:—

"Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard."

7. **Insertion of new section 14-C**:—After section 14-B of the principal Act, the following section shall be inserted, namely:—

Power of court to make orders:—"14-C. (1) Where an employer is convicted of an offence of making default in the payment of any contribution to the Fund or the Family Pension Fund or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 or sub-section (5) of section 17, the court may, in addition to awarding any punishment, by order in writing require him within a period specified in the order (which the court may, if it thinks fit and on application in that behalf, from time to time, extend), to pay the amount of contribution or transfer the accumulations, as the case may be, in respect of which the offence was committed.

(2) Where an order is made under sub-section (1), the employer shall not be liable under this Act in respect of the continuation of the offence during the period or extended period, if any, allowed by the court, but if, on the expiry of such period or extended period, as the case may be, the order of the court has not been fully complied with, the employer shall be deemed to have committed a further offence and shall be punished with imprisonment in

respect thereof under section 14 and shall also be liable to pay fine which may extend to one hundred rupees for every day after such expiry on which the order has not been complied with."

8. Insertion of new section 17-B.:—After section 17-A of the principal Act, the following section shall be inserted, namely :—

"17B. **Liability in case of transfer of establishment.**— Where an employer, in relation to an establishment, transfers that establishment in whole or in part, by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under any provision of this Act or the Scheme or the Family Pension Scheme, as the case may be, in respect of the period up to the date of such transfer :—

Provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer."

9. Amendment of Act 45 of 1860 :—To section 405 of the Indian Penal Code, the following **Explanation** shall be added, namely :—

"**Explanation** :—A person, being an employer, who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid."

K. K. SUNDARAM,
Secretary to the Government of India